IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE ELEVENTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE A.GOPAL REDDY

WRIT PETITION NO :18506 of 2004

Between:

S.Ibrahim Ali Khan, S/o.Mirza Ali Khan,rep.by its GPA holder B.R.Naidu,
Plot No.1343, Road No.67, Jubilee Hills, Hyderabad.

..... PETITIONER

AND

1 The Municipal Corporation of Hyderabad, rep.by its Commissioner, Tank Bund Road, Hyderabad.
2 The District Collector, Hyderabad Dist.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction, one more particularly in the nature of a writ of "Mandamus" declaring the action of the 1st respondent in not receiving or considering the application of the petitioners seeking building permission for house bearing No.8-2-326/3/1 situated at Road No.3, Banjara Hills, Hyderabad by insisting on the production of the 'no objection certificate' from the District collector, Hyderabad as being illegal, arbitrary, unconstitutional and contrary to law declared by this Hon'ble court and consequently direct the 1st respondent to receive, consider and process the petitioners application for construction in the said plot without insisting no objection certificate from the 2nd respondent and issue sanction for the construction of the building in said premises.

Counsel for the Petitioner: MR.S.NIRANJAN REDDY,Advocate.

Counsel for Respondent No.1: SMT.G.JYOTHI KIRAN,

Standing Counsel for MCH.

Counsel for respondent No.2: Govt. Pleader for Panchayat Raj.

The Court at the admission stage made the following :

Oral Order:

Heard Mr.S.Niranjan Reddy, learned Counsel for the petitioner, learned Standing Counsel for MCH for respondent No.1 and learned Government Pleader for Panchayat Raj for respondent No.2.

Petitioner claims to be the owner of house bearing No.8-2-326/3/1 admeasuring 900 sq.yards situate at Road No.3, Banjara Hills made an application to the 1st respondent seeking permission for construction of new building. But he refused to receive the application on the ground that the application is not accompanied with No Objection Certificate issued by the District Collector—2nd respondent. Questioning the action of the 1st respondent in not according permission and insisting No Objection Certificate issued by the District Collector petitioner filed the present writ petition.

This Court in ***POTTERIES PRIVATE LIMITED v. COLLECTOR, HYDERABAD*** held as under:

> " The Commissioner is required to make pragmatic assessment of the material available on record and decide the question of prima facie title and lawful possession of the applicants. The applications for grant of permission cannot be rejected solely on the basis of TSLR entries. After all, the decision to grant permission itself would not confer any title upon the applicant, nor it would take away the rights of the objection(s) whether the Government or any individual, for asserting their right, title and interest in the land in respect of which permission has been granted and dispute the title in any manner known to law. Similarly, the Commissioner is not entitled to decide any dispute questions of title or the

> ownership. All that the Commissioner required to do is to find out prima facie title and lawful possession of the applicant and obviously such consideration is confined to only for the purpose of granting permission and nothing more."

The said view was also approved in W.A.No.1096 of 2001 dated 24-12-2001.

In view of the same, the application filed by the petitioner cannot be rejected and has to be considered basing upon on the material available to establish the title of the petitioner and possession. Accordingly, a writ of Mandamus shall issue to the respondents to receive the application filed by the petitioner seeking permission for construction of a building on the premises bearing No.8-2-326/3/1 situate at Road No.3, Banjara Hills and pass appropriate orders in the light of law declared by this Court as stated supra.

With the above direction, the writ petition shall stand disposed of. No costs.

_____ A.GOPAL REDDY, J.

11-10-2004

Murthy

Assistant Registrar

//true copy//

Section Officer

To

1 The Municipal Corporation of Hyderabad, rep. by its Commissioner, Tank Bund Road, Hyderabad.
2 The District Collector, Hyderabad Dist.

3. Two CCs to the Govt. Pleader for Panchayat Raj, High Court Buildings, Hyderabad (OUT)

4.Two CD copies.